

THE HIGH COURT- BOLGATANGA
HELD ON 24TH DAY OF JULY, 2023
BEFORE HIS LORDSHIP,
CHARLES A. WILSON

UE/BG/HC1/C12/22/2023

YENYEYA MINING GROUP
VS.
EARL INTERNATIONAL GROUP (GH) GOLD MINING LTD

Joseph Awakpatsa for Defendant/Applicant
Juliet Agboh for Plaintiff/Respondant

RULING

BACKGROUND FACTS

The plaintiff is a small scale mining group registered with the mineral commission. The 1st defendant is a limited liability mining group registered under the laws of Ghana. The 2nd defendant is the former chief executive of Shaanxi Mining Ghana Ltd, a defunct mining company and now the chief executive of the 1st defendant company Ltd.

The plaintiff alleged that in September, 2008, it entered into an agreement with Shaanxi Mining Ghana to provide mining support to the plaintiffs small scale mining operations. The plaintiff alleged that the defendants were in breach of their obligations under the agreement.

On the 12th May, 2023, the plaintiff brought an action against the 1st defendant company and the 2nd defendant chief executive claiming inter alia

- a) *Damages resulting from injury to the plaintiffs rights by the conversion of plaintiffs ownership of its small scale mining concession by the defendants*
- b) *An order directed at the 1st defendant company to stop its illegal operations in the plaintiffs concessions.*
- c) *A perpetual injunction restraining the defendants from illegal mining activities in the plaintiffs concession.*



In his application for the reliefs and orders, the plaintiff sought a temporary application for an injunctive relief.

The Application To Set Aside the Writ

On the 19th June, 2023 the defendants filed a conditional appearance and filed a process to set aside the writ.

The parties counsel, had agreed that there are two motion applications which they have respectively made, awaiting this court's ruling.

I will address first the 1st defendant application to set aside the writ of summons, this is because if the 1st defendant application to set aside the writ of summons is granted, it would render the plaintiff action otiose.

In support of the application the first defendant deposes and argues that the plaintiff, even though it is a licenced mining company is not a legal entity that is clothed with the capacity to sue and be sued.

Learned counsel relied on two cases on capacity
Mainoo vs. Nsiah (2005) SCGLR 25 at page 30-31.

Asante Appiah Vs. Amponsah alias Mensah (2009) SCGLR 95.

Referring to these cases, the learned counsel for the defendants contended that though the plaintiff has provided a mining licence, a mining licence does not create a justiciable personality under the Companies Act.

Further learned counsel argued that, the plaintiff filed Exhibit YN2, to connect the defunct Shaanxi Mining Ltd to the 1st defendant company, Earl International Group (GH) Ltd, Counsel on behalf of the co-defendants argued that these two companies are not the same, the Earl Company is not the same as Shaanxi Ltd. Learned counsel concluded that Yenyeye Mining Group, haven been registered only as an enterprise, is not a body corporate that can sue.

The plaintiff submitted an affidavit in opposition. In her reply, Ms Juliet Agbo Counsel for the plaintiff submitted that the chief executive of Shanxi Company Ltd, in 2018, wrote to the plaintiff that they have transferred all assets of the company to the 1st defendant company Earl International Gold Ltd, she referred to Exhibit YN1 A.

Learned counsel for the plaintiff maintained that the 1st defendant company succeeded Shanxi Company Ltd. She cited in support of this submission.

Afrikania Mission Church

Vs.

Ceber Construction Ltd (2013) 59. GMT 176 at 204

Ago Sai & Others

Vs.

Kpobi Tetteh Tsuru (2010) S.C. GLR

and submits that the defendants are estopped by section 26 of the Evidence Act.

I have read the Section 21 of the Companies Act, Act 992 and the various cases cited by counsel for the plaintiff/respondent and wholly agree with counsel when she argued that the 1st defendant company Earl International Group Ltd acquired the assets and liabilities of the company that ceased to exist.

See Kowus vs. Cheek Point Ltd (2019) S.GMJ SC at page 15.

In my view the defendants motion to set aside the plaintiffs writ is something of an academic exercise . I think that, it is to prevent the plaintiff from calling upon the defendants from carrying out their obligations under the agreement.

To me this is no proper ground to dismiss the plaintiffs case enlimine. It would not be in keeping with the overriding objectives to achieve justice to set aside the plaintiffs writ. The application filed on the 9th day of June, 2023 to set aside the plaintiffs writ stated in the supporting affidavit is hereby dismissed.

Preliminary Injunctive Relief

Now on the plaintiffs application for interim injunction, I waive any necessity for the defendant to file any affidavit in opposition, I approach this issue purely from the angle of the plaintiff/applicants averments and depositions in support of the application.

Interlocutory Injunction – Guiding Principles

The determine whether the an interlocutory injunction be ordered is provided by Lord Diplock in the case of

American Cynamide Co Vs. Ethicon Ltd (1975) All E.R 504. He said at page 510

“So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought”

The requirements for an interim injunction order therefore are:

- i. The applicant must establish that there is a legal right to be protected.*
- ii. The plaintiff must establish irreparable harm or damage to the plaintiff.*
- iii. The applicant must show that there is a balance of convenience in his favour, granting the injunction*

Welford Quarco Vs. Attorney General (2012) 1 SCGLR 256at 260.

Opinion Analysis

It appears the application for injunction is a speedy remedial step by the plaintiff to hold the defendant mining activities in abeyance without going into the merits of the case.

It is clear from the plaintiffs pleadings and reliefs, that the plaintiffs interest is damages and monetary compensation, it would be an adequate remedy for the plaintiff to be awarded damages, it should be noted in this context there has been no allegation that the defendants would be unable to meet any monetary or compensatory award.

There would be injury to the defendants business, if the plaintiff is unsuccessful in his claim. It would be prejudicial to the defendants case for this court to make interim orders to restrain the defendant business activity and mining operations at

the early stages of the proceedings only to turn round and discharge the orders, if the plaintiff is unable to establish its claim.

The plaintiff would not be in a position to pay any loss incurred by the defendants as a result of the improper exercise of powers by the court.

Conclusion

I would deny the application because it seeks largely the same injunctive relief. The application for an interim injunction by the plaintiff is refused.

Order 37 rule 2 of High Court Civil Procedure Rules C.I 47 provides.

“It is the duty of the parties, their lawyers and the Court to avoid all unnecessary adjournments and other delays, and to ensure that causes or matters are disposed of as speedily as the justice of the case permits”

In the context of the above. The defendant are ordered to file a defense within 10 days from the date hereof.

Cost of GH¢5,000.00 is hereby awarded to the Plaintiff/Respondent Yenyeya Mining Group.

So ordered.

SGD
JUSTICE CHARLES A. WILSON
JUSTICE OF THE HIGH COURT

HIGH COURT JUDGE